

MINUTES

ETHICS REVIEW COMMISSION MEETING MAY 12, 2010 5TH FLOOR AMERICAS CONFERENCE ROOM - 5:00 P.M.

MEMBERS PRESENT

Francisco Ortega, District #1
Andre Ewing, District #4
Paul Harrington, District #6
Alexander Neill, District #7
Gracia Sandoval, District #8

MEMBERS ABSENT

Maxey Scherr, Mayoral
Raymond Rodriguez, District #2
Larry Medina, District #3
Rodney Hansen, District #5

OTHERS PRESENT

Elaine S. Hengen, Senior Assistant City Attorney
Sandra Dunsavage, Recording Secretary

I. CALL TO ORDER AND INTRODUCTION OF NEW MEMBERS.

Seeing a quorum, Vice - Chair Neill called the meeting to order at 5:07 p.m.

Ms. Hengen introduced Mr. Francisco Ortega to the commission. Ms. Hengen advised the commission that Mr. Neill and Mr. Harrington have been reappointed to serve a second term. Mayor John Cook appointed Maxey Scherr. Representative Emma Acosta appointed Larry Medina. All of the positions are filled. No further action taken on this item.

II. APPROVAL OF MINUTES FOR JANUARY 20, 2010.

Mr. Neill moved to approve the minutes of January 20, 2010. Mr. Ewing seconded motion, all in favor and the motion passed unanimously.

III. DISCUSSION AND ACTION TO ELECT THE CHAIR AND VICE CHAIR.

Nomination of Alex Neill for Chair made by Mr. Ortega. No other nominations made. Mr. Neill accepted. Motion made by Mr. Ortega to nominate Mr. Neill as Chair, and seconded by Ms. Sandoval, all in favor and the motion passed unanimously.

Nomination of Paul Harrington for Vice-Chair made by Ms. Sandoval. No other nominations made. Mr. Harrington accepted. Motion made by Ms. Sandoval to nominate Mr. Harrington as Vice-Chair, and seconded by Mr. Neill, all in favor and the motion passed unanimously.

IV. DISCUSSION AND ACTION FOR THE CHAIR TO MAKE PANEL ASSIGNMENTS.

Panel assignments made as follows:

Panel 1: Alex Neill, Maxey Scherr, and Raymond Rodriguez

Panel 2: Paul Harrington, Larry Medina, and Andre Ewing

Panel 3: Francisco Ortega, Rodney Hansen, and Gracia Sandoval

V. DISCUSSION AND ACTION ON A PROPOSED AMENDMENT TO THE ETHICS ORDINANCE TO LIMIT THE TIME PERIOD FOR ACCEPTING CAMPAIGN CONTRIBUTIONS.

Ms. Hengen explained that in August of 2009, the Ethics Review Commission had proposed an amendment to the Ethics Ordinance that would “include a timeframe for fund raisers of six months before and six months after an election” as stated in the minutes. The proposal was to add a provision to the campaign finance portion of the Ethics Ordinance that would restrict the time period in which campaign contributions could be accepted by the elected officials. Under State Law the term used is political contributions. There are two types of political contributions; one is an office holder contribution and the other is a campaign contribution. They all come under the umbrella of political contributions and they have to be reported. The Ethics Commission had asked that this proposal be presented to the Council Rules Legislative Review Committee for their consideration.

In January, 2010, the Supreme Court decided a case called Citizen’s United vs. Federal Election Commission. The primary focus of this particular case was whether or not a federal ban that prohibited corporations from spending funds to either support or oppose a candidate within a time period near an election was constitutional or not. The Supreme Court said it was unconstitutional to prohibit a corporation from spending money to communicate within a certain time period around an election on matters that constituted a speech activity in either promoting or opposing political candidates. The case has relevance to the proposed amendment by the Ethics Commission because it has language that in effect shoots down much of the law that the commission had relied on in August 2009 to support the ordinance, and now that doesn’t exist anymore. One of the things that the particular case says is that a ban, banning contributions or banning expenditures, is very different from limiting them. The proposed ban is a new ban and the difficulty with this particular ban is that it is an intermittent ban. The proposed ban states that making contributions at certain time periods is okay, but if contributions are made at a different time period it is not okay. Because of the partial ban, or intermittent ban, it falls into a situation under the law of the law as being under inclusive. The Court in the Citizen’s United case is now requiring that conditions of such a ban meet the strict scrutiny guidelines. A compelling governmental interest in supporting this regulation has to be shown and it also has to be shown that the regulation is in the least restrictive manner possible, narrowly tailored to achieve whatever the compelling governmental interest is. A ban can no longer be proposed solely on the basis of assuming that unlimited access or free access without regulation will automatically mean corruption.

An actual harm scenario would have to be shown where there is actually harm taking place and that the ban is necessary to address.

Ms. Hengen explained that she followed up with Representative Robinson, Chair of the Council Rules Legislative Review Committee, to see whether or not he still wanted to move forward with the Rules LRC meeting. Representative Robinson asked that Ms. Hengen bring this proposal back to the Ethics Review Commission for the commission's decision as to what action to take. A review of the monthly reports filed by the officials could be reviewed comparing what type of contributions are being made in order to see if there is actually a potential for some harm.

Ms. Hengen advised the commission that she will review the monthly reports filed by the officials and she will compile a useful report for the commission to use to help determine if there is something to indicate that some potential harm exists. Ms. Hengen advised the commission that she will commit to communicate with Chair Neill and keep him informed of the status of the report within 3 weeks.

Chair Neill made the motion to advise Representative Robinson that at this time the Ethics Review Commission is not asking for a meeting of the Council Rules LRC just for the consideration of this proposed amendment to the ordinance. Motion seconded by Mr. Ortega, all in favor and the motion passed unanimously.

VI. SCHEDULING OF NEXT MEETING(S).

Chair Neill recommended that the scheduling of the next meeting be postponed until Ms. Hengen's report is ready.

VII. ADJOURNMENT.

Motion made by Mr. Ewing and seconded by Ms. Sandoval to adjourn the meeting. All in favor and motion passed unanimously. Meeting adjourned at 5:41 p.m.